

**COMMISSION MEETING
THURSDAY, MAY 8, 2003
MINUTES**

Chairman Orr called the meeting to order at 1:30 p.m., at the Red Lion Inn located in Wenatchee. Chairman Orr welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER LIZ MCLAUGHLIN
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;
SENATOR SHIRLEY WINSLEY;**

STAFF PRESENT: **RICK DAY, Executive Director;
ROBERT BERG, Deputy Director;
ED FLEISHER, Special Assistant;
AMY PATJENS, Manager, Communications and Legal Dept.;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

In observance of Employee Recognition Week, **Director Day** acknowledged the Commission's staff for their work on behalf of the State of Washington. Director Day invited the Commissioners to attend the Agency Conference being held in Lacey on May 20-21. He noted the primary objective was to produce a final draft of the strategic plan for review and adoption at the August commission meeting, and to celebrate the agency's 30th Anniversary.

1. Review Of Agenda and Director's Report:

Director Day identified and reviewed inserts to the agenda packet. He noted the E Link message to staff addressed performance accountability throughout the entire organization, and the concepts of good management, accountability, and performance within the Commission. Director Day affirmed his performance agreement with the Commissioners requires him to bring proposals to the Commission in two study areas: The vitality of nonprofit charitable gambling, and the potential study of the gambling tax structure in the State of Washington. Director Day reviewed the agendas for Thursday and Friday, and reported that Item #5 and Item #6 were withdrawn

Legislative Update:

Director Day drew attention to the legislative report and advised he would only report on new information and issues that are pending or may come before the Legislature.

HB 2263 & SB 6078 - House- Banked Card Room - **Director Day** reported these two new bills were introduced by Representative Bush and Senator Prentice. They require discontinuing issuing new licenses for house-banked card rooms, and after a 12-year period eliminates house-banked card rooms. No hearings have been scheduled at this point.

HB 1637 Problem Gambling – The bill has been passed and signed by the Governor. One the bill goes into effect, the Commission may consider readdressing a contract and potential funding for the Council on Problem Gambling. Executive Director Gary Hanson has already made contact to discuss this issue.

HB 1948 – EIC Bill – The bill would authorize machine gambling in Washington and on tribal locations. This legislation has not had a hearing at this time, and the Commission has been made aware there is an alternate bill behind the scenes, which we are not sure will be introduced. Similar to the bill from the EIC, the responsibility for the machines and the authorization for machine gambling would be placed within the Washington State Lottery statutes, instead of Title 9.46.

There are significant issues: The concept of marketing verses regulation – the state has traditionally kept those two aspects separate in any gambling that deals with 9.46, especially with the tribes. The tribes have to maintain a separate tribal gaming regulatory function apart from their gambling operation. If this bill moves forward, and the responsibility and authorizations are placed under the Lottery; that would take the state in an entirely different direction. If the statutes authorize machine gambling, and are placed in what would be a separate title from the Lottery and from Title 9.46 (which authorizes all the rest of the gambling), then the Lottery would be exempt from the regulation in that statute. In effect, that would mean that anyone operating and doing things like tampering with machines would be exempt from the strict regulation control and potential prosecution for cheating and the things governed in Title 9.46.

Commissioner McLaughlin asked what the point would be for having two regulatory agencies doing the same thing. **Chairman Orr** acknowledged the concern about having two different organizations with two different sets of rules, and two different sets of punishments for violating those rules. **Director Day** affirmed it would require the duplication of the existing infrastructure from the Washington State Gambling Commission to be reproduced in the Lottery Commission. Commissioner McLaughlin suggested they could contract for the regulation. Director Day expressed concern on how the Commission would provide background information relative to licensing issues that would pertain to the machines. He noted the Commission's authority to access the criminal justice systems is based on specific issues and crimes associated under Title 9.46. The full concept of how this bill would be implemented hasn't been introduced. Director Day suggested the Commission consider the potential ramifications, and consider authorizing staff to convey the appropriate concerns if the Legislature considers the concept proposed.

Commissioner McLaughlin stated that if the state was trying to save money, it would be silly to set up a separate system, unless they contracted with the Gambling Commission for the regulation. **Chair Orr** suggested contacting the Commerce and Labor Committee to explain what would happen, and to put them on notice and suggest ways to correct the proposed legislation. (Senator Winsley arrived.)

SB 5404 - Operating Budget – This bill still identifies a 1.5 million dollar transfer from the Commission to the General Fund. The budget notes indicate a 10.2 FTE reduction for the Commission, and sited approximately \$1.8 million would be tied to state government efficiencies. Director Day noted it appeared that things would not change at this point. He proposed providing updated information at the June Commission meeting along with a review of the Commission's approved budget, with an objective to reaffirm the approved budget, or make any desired changes, so that staff could convey the information to OFM. The commissioners concurred.

Administrative Issues:

Director Day provided a summary of the two proposed studies: the Public Policy Research Project and the Charitable Nonprofit and Gambling Tax Structure. He noted the concept evolved from discussions relating to his performance agreement to bring forth proposals, structured through study session participation, and others, about what the perimeters of those studies might be, and to bring the proposals and their potential costs back to the Commission for consideration. Regarding the tax structure project, the intent would be to determine how charitable nonprofits benefit the state. While the legislative intent has been identified in the statutes that have been around 30-years, Director Day noted it was time to check how gambling tax is assessed in the state. The Commission could consider the results of that study and decide whether direct changes in any of the Administrative Rules were needed, as well as their impact, and whether the Commission should recommend any changes to the Legislature. He anticipated the study would provide the Commission with some facts regarding some of the controversial issues the Commission has been struggling with.

Secondly, **Director Day** reported the agency's enforcement staff, along with the Pullman City Police raided an illegal card game operation in Pullman. He emphasized that public safety is the first concern, which is why the Commission doesn't want these games to continue even though they may seem innocent to some parties. He extended congratulations to our enforcement staff and the staff from the City of Pullman for bringing that activity to an end.

Correspondence:

Director Day reviewed the correspondence sent to Senator Rossi, Chair of the Senate Ways and Means Committee and Representative Helen Sommers, Chair of the House Appropriations Committee expressing the Commission's opposition to any proposed transfer from the Gambling Revolving Account to the State General Fund, as requested by the Commission at the last meeting. He advised that while we haven't had an impact, the Commission is on record opposing that transaction and has laid out the important reasons regarding the nonappropriated status of the agency, the fact that those fees are collected from both tribal and nontribal sources for a specific purpose (to provide for effective gambling enforcement in this state), and, as a result, those funds should not be transferred to a purpose for which they were not intended. **Chairman Orr** encouraged his fellow commissioners and licensees to contact their Legislators.

Monthly Update Reports:

Director Day highlighted the Administrative Case Report. There were no Congressional Updates. **Director Day** reviewed the news articles contained in the agenda packet. **Chairman Orr** called for public comments, and there were none.

2. Group IV Qualification Review:

Yakima Greenway Foundation, Yakima:

Deputy Director Robert Berg reported this qualification review was conducted for the year ending December 2001. He noted that in April 2001, new rules went into effect and prior to that time most of the charities and nonprofits operating Bingo were protected as a result of the net return moratorium, which the Commission put into effect while the net return task force did it's work. The numbers would appear to be non-compliant today, however, for the year for which the qualification review was conducted, the licensee was in compliance, and the organization is in compliance today. Mr. Berg reported the Yakima Greenway Foundation is located in Yakima. The organization was formed in 1980, and has been licensed by the Commission since 1992. The entity owns and maintains a system of parks, pathways and natural trails and areas along the Yakima and Naches Rivers. They hold two licenses from the Commission; a Bingo license in the Class J range and a Pull Tab license in the Class H range. Staff conducted a review of their gambling operations and the operations of their nonprofit entity for the calendar year of 2001, and found they were making significant progress to the stated purpose of their charitable nonprofit organization, and were qualified as a bona fide nonprofit organization in the state of Washington. Staff recommends that the Yakima Greenway Foundation be certified to conduct gambling activities in the state of Washington as a nonprofit organization.

Al Brown, Director, provided a brief presentation of the Greenway Foundation denoting the many facilities they maintain. He reported that all of the parks are open to the public, free, 365 days a year. They developed their parks, playgrounds, pathways and parking lots because the people willed it, some through volunteer efforts. Mr. Brown reported that Bingo was 45 to 55 percent of their 1997 budget, 17 to 18 percent of the budget in 2001, and just 6 percent of the budget in 2002. He acknowledged that they have had to cut programs and employees, use more volunteers, use jail crews to pick up litter, and do whatever they could to get the job done with less money and still try to make the Bingo operations profitable. He emphasized they are not under an illusion that Bingo activities will climb, and they are working on an exit strategy and looking at other alternatives to fund their park system. **Chair Orr** called for questions and public testimony. There were none.

Commissioner McLaughlin made a motion seconded by **Commissioner Niemi** to certify the Yakima Greenway Foundation located in Yakima to conduct gambling activities in the state of Washington as a nonprofit organization. *Vote taken; the motion passed with five aye votes.*

3. Phase II Review:

Blue Mountain Casino, Walla Walla:

Tom Young, Special Agent Supervisor, reported this facility is a commercial restaurant and card room located in Walla Walla. The business is owned by Pat Jutz and Rick Porter, each with 50 percent ownership. Their first day of card room activity was August 9, 2002. The casino submitted

their original card room internal controls in May of 2002 and their Phase I Pre-operational Inspection was completed in July of 2002. The licensee is currently licensed for five card tables, consisting of one Spanish 21, one Three Card Poker, one Texas Shootout, one Lucky Ladies and one Poker. A review was also conducted of the organizations gaming and organizational records to insure the record keeping was in compliance. No material violations were discovered. The City of Walla Walla was contacted and confirmed the licensee was current with all local card room taxes. The Police Department was contacted to determine local impacts, and none were noted. The licensee is currently at \$25 betting limits on all tables. The Phase II review notification was mailed in March of 2003. The review team compared actual operating procedures to WAC rules. No material violations of the operating procedures were noted. Based on the review, staff recommends that the Blue Mountain Casino be approved to operate at Phase II wagering limits, effective immediately.

Chairman Orr asked for questions. **Mr. Patrick Jutz** introduced himself. **Commissioner Ludwig** complimented Mr. Jutz for not having any material violations.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to approve Blue Mountain Casino to operate at Phase II wagering limits, to be effective immediately. *Vote taken; the motion passed with five aye votes.*

4. New Licenses, Changes, and Tribal Certifications:

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes and tribal certifications as listed on pages one through 17 on the approval list. *Vote taken; the motion passed with five aye votes.*

Commissioner Ludwig noted that sometime after the pilot program ended a suggestion was made to place card rooms on the same approval list. Some Commissioners felt that because this was a new program, we should look at them individually. Commissioner Ludwig asked staff to consider putting card rooms on the same list that includes manufacturers, representatives, service suppliers and card room employees, while still being able to receive a separate report on ownership, location and history of the individual applicant if that information is requested. **Commissioner McLaughlin** responded that in her area, card rooms are still an important issue, and that she wanted to see the owners and to have an “eyeball-to-eyeball” visit with them. She indicated that she would feel uncomfortable with the suggested change at this time; however, she would not feel uncomfortable about the Phase II Review. **Director Day** appreciated the comments, and noted that a rule change is under discussion regarding whether or not to move in the suggested direction. It would be closer to the elimination of Phase II Review, but would still have the applicants come before the Commission initially. Staff’s attempt is to take a step back, see how it works, and to have recommendations come forward for future discussion.

Chair Orr addressed the hearing scheduled for 3:00 p.m., and questioned whether Mr. Moradi was present. He was not. Chair Orr called for a 15-minute recess and reconvened the meeting at 2:55 p.m. Chair Orr noted that Item #5 was a petition for review scheduled for 3:00 p.m., and noted that not all of the parties were present, he therefore moved to Item #6, noting this default hearing had been removed from the agenda at the petitioner's request. Chair Orr proceeded to Item #7.

7. Tribal Gaming Unit (TGU) Functions Presentation:

Julie Lies, Manager of the Tribal Gaming Unit introduced herself and provided a brief personal report on her background with the Commission. She noted there were several representatives from the Tribal Gaming Regulatory body in the audience. She reported that in 1988, the Federal Government with the Indian Gaming Regulatory Act (IGRA), established three levels of gaming: Class One Gaming, which is the traditional game, Class Two, which includes Bingo, Pull Tabs and Poker within state limits, and Class Three, which is all other forms of gambling. IGRA also established a multi-level regulatory structure, which included the National Indian Gaming Commission, our agency -- as delegated by the Governor, and the Tribal Regulatory Environment. TGU began as a Class Three Gaming Unit in 1992. The first casino opened in July of 1992, in 1993 an additional casino opened and another opened in 1994. The record year for opening casinos was in 1995 with a total of six casinos. Since 1995, TGU opened an additional nine casinos. In 1999 the implementation of the Tribal Lottery System began. Currently there are an estimated 10,000 machines in operation in the state.

The unit consists of thirteen agents, two supervisors, a support staff and one agent in charge for a total of seventeen staff. Staff works in conjunction with over 200 tribal gaming agents and oversees approximately 45 percent of the statewide net receipts. TGU has a combined 73 years of Gambling Commission experience, 152 combined years of law enforcement, military police and investigative experience. The staff has 29 combined years of outside accounting and auditing experience, corporate management and gaming industry experience. There are three certified public accountants, two certified fraud examiners, and a total of thirteen Bachelors degrees, seven of those in accounting, two in criminal justice and the rest in political science, international relations, marketing, finance, management and agricultural economics. Two members have masters and one is a certified firearms instructor.

The unit is currently working with seventeen tribes that have eighteen casinos in operation, and the staff is actively working with four new tribes. In addition to the four new tribes, staff anticipates there will be two tribes with second facilities opening in the next few years. In the fall of 2001, TGU re-evaluated the way that they did their work, and instituted a new unit philosophy. To enhance the government-to-government relationship, the unit looked at the existing Tribal Gaming Agency, documented what made them successful, and what areas they needed to develop. Based on that information, a new approach as co-regulators was established. To perform these functions an implementation plan was developed. The plan contained three areas: training, planning with the Tribal Gaming Agencies, and independent work.

The first step in the process was training. There was a need for training in a lot of the areas of regulation. Not all the Tribal Gaming Agencies needed the same types of training, so staff decided to take a three-prong approach. That approach included formal classroom training (conducting one week of class) twice a year in April and September. This training provides a good overview and base for the regulators. Class size averages about 25 to 30 students per day, per session. Staff also performed specific activity training that was tailored for the casino or tribal staff that TGU is working with. Staff also offers impromptu training, which is on site.

The reason the unit started to plan was to avoid duplication. Most of the compacts require quarterly meetings with the Tribe or with the TGA's. They are scheduled on a quarterly basis. During the

meetings the TGA's concerns and the Commission's concerns are discussed, as well as addressing topics of mutual interest. Based on the information gleaned from the quarterly meetings, unit planning helps define the decision on where to focus TGU's attention, especially in the training area.

The final part of the unit's work is the independent work. The agency has an obligation under the compact to insure compliance, and in order to complete that the unit facilitates compliance reviews. TGU may do a full review at a facility at one time, or they may do different parts at different times. TGU also investigates questions or complaints received from the public. The Tribal Gaming Unit is constantly looking for new and better ways to complete their work with a creative decision making process. TGU is working on relationships with the Tribes and the TGA's, other regulatory bodies, and other law enforcement agencies.

Commissioner Parker asked Ms. Lies for the total fees Tribes paid to the State Gambling Commission and whether those fees define the budget the TGU operates under, or what the connection was between the two. **Ms. Lies** responded that Appendix X, the Tribal State Compact establishes how the Commission bills the tribes year to year. The current year's billing is based on the activity from the previous year. **Deputy Director Berg** affirmed the Commission collects costs from the tribes in two ways: from certification fees, wherein the agency conducts background checks for each employee. Then, TGU collects money based on actual reimbursement for time that agents spend in the tribal facilities. He estimated that between 60-75 percent of TGU's budget is recoverable through billings. He noted that commission staff has also provided training for regulators and enforcement officers from over 15 states nationwide. **Director Day** believed that approximately 20-21 percent of the Commission's revenue comes from the various tribal sources, which is in the area of \$14 million a year in revenue.

Senator Winsley hoped the Chair of the Ways and Means Committee was aware about the funds that are received from the tribes. She reported that she received a letter that basically said if the Legislature didn't fully fund the Gambling Commission, that the Indian tribes would withhold their fees or file lawsuits. Senator Winsley felt that was something that should be brought to the attention as the Commission negotiates a budget – she believed that information might get the attention of certain people. **Commissioner Parker** acknowledged discussing this subject last year when the question came up, noting it's an established principle of law that a state doesn't have the authority under Federal Law to tax a tribe, and, if indirectly the Commission ends up essentially imposing additional fees upon the tribes because the money is going out on the other side of the budget, because of these levies that are contained in the budget bill, then that creates a scenario where the tribes are in a position to argue that they are indirectly being assessed a tax. **Director Day** affirmed the recent letters to Senator Rossi and Representative Sommers included a statement that such transfers could be seen as a hidden tax, and that further transfers may violate tribal/state compacts via the Federal Prohibitions against State Taxation of Indian Tribes. **Commissioner Parker** noted that he is a faculty member at Evergreen State College, and the college is completing their first year of a new program, a Masters Degree in Tribal Government. Half the classes are specialized courses in tribal government issues, management and administration. He suggested inviting Ms. Lies to come talk to the students – while the students don't have a particular focus on tribal gaming, it's relationship to creating revenues for tribal operations is a reality, in addition to the tribal responsibilities under the Federal law to be the primary regulator. There were no further comments.

Chairman Orr referred back to Agenda Item #5.

5. Petition for Review - Card Room Employee:

Nosratollah "Pete" Moradi, Silver Lanes & Scrapbook Restaurant, Spokane:

Michael Lufkin, Assistant Attorney General, advised that he was present on behalf of the Gambling Commission staff regarding a Petition for Review on an Initial Order, which denied the licensure of Nosratollah "Pete" Moradi. It was a denial of his card room employee license application. Mr. Lufkin didn't believe Mr. Moradi was planning on being present because Commission staff received a call from him yesterday indicating that it was more than likely that he would not be present. However, the agenda packet contains Mr. Moradi's Petition to the Commission on the Initial Order, and Attorney Lufkin's response to that petition. Mr. Lufkin reminded the Commissioners the roll of the Commission this afternoon was to decide whether to adopt the initial order, revise the initial order, or remand the order back to the Administrative Law Judge (ALJ). Staff recommended adopting the ALJ's initial order in its entirety. Mr. Lufkin then provided background information about the case. (A transcription of the hearing is available upon request.)

Commissioner Niemi asked if there was any indication in the file that the Petitioner was indeed aware of the hearing today. **Mr. Lufkin** affirmed.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to adopt the findings and conclusions of the Administrative Law Judge because they were well supported by the admissions and statements made by the Petitioner. *Vote taken; the motion passed unanimously.*

Assistant Attorney General Ackerman affirmed an Initial Order would be drafted and circulated for signature.

6. Default Hearing - Card Room Employee license Revocation:

Paulina Tran, Double Down & Palace Casino, LaCenter:

This agenda item was withdrawn; the card room employee requested a hearing.

8. Other Business/General Discussion/Comments from the Public:

Chair Orr called for public comments, and there were none. At 3:25 p.m., Chair Orr adjourned the meeting. He noted Friday's meeting would commence at 9:30 a.m.

**COMMISSION MEETING
FRIDAY, MAY 9, 2003
MINUTES**

Chairman Orr called the meeting to order at 9:35 a.m., at the Red Lion Inn located in Wenatchee, and welcomed the attendees. He advised that he would be taking agenda items out of order.

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR Chair;
COMMISSIONER LIZ MCLAUGHLIN;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;
SENATOR SHIRLEY WINSLEY;**

OTHERS PRESENT: **RICK DAY, Executive Director;
ROBERT BERG, Deputy Director;
ED FLEISHER, Special Assistant;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing;
AMY PATJENS, Administrator, Communications & Legal;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant;**

9. Minutes: Regular Meeting, April 10 and 11, 2003 – Bellingham:

Commissioner Niemi made a motion seconded by **Commissioner Ludwig** to approve the regular meeting minutes of April 10 and 11, 2003, as presented. *Vote taken; the motion passed with four aye votes, Commissioner McLaughlin abstained due to her absence from that meeting.*

Director Day addressed Senate Bill 5504 – Operating Budget, noting it was amended in the House with a provision for a task force housed under the Lottery Commission, that is intended to examine possible means to enhance state revenue from gaming. The membership in that committee includes the Lottery Commission Director, the Gambling Commission Director, representative from the Governor's Office, and a set of Legislators. This is in the House budget, and has not yet been accepted by the Senate. Negotiations continue as to which budget will ultimately come forward. Representative Grant sponsored the amendment, which has been amended into the House budget at this point. When questioned how this study session would be different from the last study, **Director**

Day responded that this study was directed right at the means to increase revenue from gambling for the state. Senator Prentice's previous study had a more general task.

Commissioner Parker referred to the agenda packet and noted that the Commission is also undertaking a public policy research project, which among other things, includes the issue of taxation and how to compare the level of taxation that now exists. He verified that staff would be documenting the level of taxation local jurisdictions are now exercising over gambling activities in their jurisdiction. Commissioner Parker inquired where that research may lead to, and how that may be connected to something the Legislature may commission. **Director Day** acknowledged there might be some overlap between the legislative study and the Commission's project. However, the Commission is charged with the responsibility and authority to conduct that kind of work and review. The study the Commission is anticipating would be to start with no assumptions, to look at the structure that came from 30 years of the Commission's existence -- the statutory structure of gambling, and how there was a separation between regulatory and revenue collection. The state has no state gambling tax at all -- that has been reserved for the counties and cities, etc. The Commission wants to conduct an examination to determine if that is still a valid approach, or if there are other mechanisms that should be created. **Commissioner Niemi** believed that what we're asking for is a little broader than information on local jurisdiction taxation. She expected the Commission would look at what other jurisdictions in the country are doing, to see if there is anything other jurisdictions are doing that would make us want to suggest to the Legislature that a change in our gambling laws would be appropriate for fiscal reasons. **Director Day** affirmed the plan would be to outline specific parameters of the study and bring a proposal to the Commission. Once we know what happens to this budget amendment, the Commission would have an option to ensure that there is no duplication between the two studies. The commissioners concurred.

Chair Orr proceeded to Agenda Item 13:

13. Petition for Rule Change Submitted by the Washington Charitable and Civic Gaming Association Regarding Adjusted Cash Flow Petition and Variance Process:

WAC 230-20-059:

Amy Patjens, Manager, Communications & Legal, explained that Item #13 is a petition submitted by Frank Miller on behalf of the Washington Charitable and Civic Gaming Association (WCCGA), dealing with the variance process. The WCCGA represents about 20 of the bigger nonprofit organizations; they represent Seattle Junior Hockey, and Big Brothers/Big Sisters in King County, which happened to be two of the largest nonprofit organizations in the state. The Charitable Nonprofit Voice (CNVP) represents about 13 licensees from the Olympia, Tacoma, and Seattle area. The WCCGA has been around for many years, and the Charitable Nonprofit Voice organized just recently because they wanted to make it clear that the WCCGA wasn't always speaking for all the nonprofit organizations. After the last commission meeting, staff met with the representatives who submitted the two petitions, and shared the staff's concerns. Both organizations withdrew their original petitions and have now submitted new petitions. Ms. Patjens affirmed that both of the new proposals are better than the originals, although staff still had concerns.

Ms. Patjens explained that under the new petition submitted by the WCCGA, the responsibility of reviewing waivers is now transferred to the Director, or an Administrative Law Judge, it is not with the Commission. There are some provisions: the licensee would have to establish by substantial

evidence that they haven't had a variance for three years. They would have to agree that if they submit a petition for variance and it's granted, if they are unable to achieve compliance during those subsequent quarters, they would surrender their license and wave their right to an appeal. The acceptable reason for a waiver would be the ability to show that they have had a demonstrable adverse financial impact due to one of three things: 1) Some type of unforeseen circumstance -- as listed, some type of threat advisory or a terrorist attack, 2) If electronic gambling machines are introduced within 20 miles of their location, and 3) If new legislation or other governmental action is introduced that either increases their expenses, decreases their attendance, or decreases their gross gambling income. By governmental action, they could also be looking at any action by the Gambling Commission, for example, perhaps the Gambling Commission decided to set limits on prizes (not something the Commission has done in the past, we've always required that they meet the bottom line cash flow or net return). If the Commission took some kind of action that would have an impact on their expenses, attendance, or gross gambling income, the licensees would want to have that considered as well. At the end of the variance review period, staff would review the quarterly activity reports, and if the licensee hasn't met the requirements, then they would have to surrender their license, however, they could also apply for a lower licensee class. Two significant changes were made between this month and last month that relate to the time that a licensee would be out of compliance -- that has been reduced from about three or more years to about two years. Additionally, the number of hearings that could occur was reduced.

Ms. Patjens affirmed there are still concerns that have carried over from the first petition. One is the concern about the standards being clear and articulate. Assistant Attorney General Ackerman has advised that it would be important to make sure the standards by which a licensee could qualify for a variance were good, clear standards. Another concern that staff has, is that the petition looks at why a licensee maybe out of compliance, but it doesn't address how a licensee is going to get back into compliance. This variance process doesn't require a plan to get back into compliance as a piece of the criteria for being granted the variance. Staff also has legal concerns. Although it sounds like a simplified process to say that if one chooses this variance route, then couldn't meet the requirements, they have to automatically surrender their license -- staff has some due process questions with that process. There are not any rules where an automatic event would occur; they're traditionally going to have a right to a hearing to make sure that the agency has been not arbitrary in their decision-making.

Ms. Patjens reported the Commission has sixty days to take action on a petition. With this petition, because of the way the Commission meetings fell, the Commission must take action at this meeting. The Commission has three options: to simply file the rule for further discussion, deny the petition and explain why, or propose an alternative to the rule.

Commissioner Ludwig addressed the plan, and noted that under the "Sanctions for Failing to Meet" (in paragraph 4-A), it indicates that if a Bingo licensee fails to meet the adjusted cash flow requirements, etc., the licensee shall develop a plan to gain compliance. **Amy Patjens** explained that is one of the reasons for granting the variance now -- the licensee has to show they have a plan to get back into compliance. Under Subsection 5, the plan Commissioner Ludwig referred to is the same as the plan that licensees must submit after they have been out of compliance for two quarters. Under the current rule, one of the conditions for getting a variance is that the licensee must have a plan to get back into compliance. Subsection 5 requires a plan after two quarters, but it doesn't

require that the licensee carry that plan over. **Commissioner Ludwig** suggested it would be simpler to say, "to develop a plan, which shall be filed along with the petition."

Commissioner Ludwig made a motion (without taking a position on the proposed rule), that the rule in Agenda Item 13 be filed for further discussion. **Commissioner McLaughlin** seconded the motion. **Commissioner Parker** asked if approved, what the impact would then be on taking action on the final rule change -- by agreeing to this motion, in effect, would it defer action on the rule change. **Mr. Ackerman** believed not, and explained the rule change that has been on the calendar for four months, is up for final action. By filing this petition, the Commission is saying they will continue to consider this petition for up to four months, and then make a decision on whether or not to enact this petition. The Commission may today decide to pass the rule change that staff has proposed, which has been on the calendar for several months, and effectively amend the WAC. The Commission may then also consider this petition for the next four months, or however long the Commission chooses to do so. If the Commission feels it is a better alternative than the WAC passed today (if that is the action taken), then the Commission may re-amend the WAC to make it reflect what has been proposed by the WCCGA. He clarified, the Commission may take final action and change the rule today and still consider this petition for a period of time deemed appropriate, and then further amend the rule to make it fit what is being proposed by the WCCGA or the CNVP for rule making. Or, the Commission could amend both and come up with an entirely different version. **Commissioner McLaughlin** asked if the variance procedure could be continued, while the Commission considers both petitions. **Mr. Ackerman** responded that in reference to the rule that is up for final action, which repeals the existing variance procedure, it would have to be extended, or re-filed. **Commissioner McLaughlin** verified that if the Commission decided to do away with the variance, and decided to hear both petitions, then for those four months there is no variance, and nothing to protect the licensee, while the Commission is trying to come up with an idea to make the variance procedure work. **Mr. Ackerman** affirmed and commented that is one of the problems of trying to consider three things at once.

Commissioner McLaughlin questioned why rush, what difference would it make, because she didn't believe there was anyone scheduled for a variance consideration. **Mr. Ackerman** advised that he didn't know if there are existing variance petitions, or whether they may surface during the consideration period. He noted the rule submitted by staff, which is up for final action, was submitted in response to specific direction from the Commissioners in November, to do something about the variance situation. In essence, the Commission is grappling with three versions of a rule today -- they have to be presented one at a time, the first has been presented, there is yet another rule (petition) that will look very different, and there is a third rule that has been on the agenda for the last four meetings, which is entirely different. How to focus the discussion is something for the Commissioners to decide, however, **Mr. Ackerman** cautioned there would be issues and decisions that would have to be made based upon the statutory time limits for the promulgation of rules.

Commissioner Parker believed the decision was whether to treat this proposal as a petition and essentially file it, agree that it may be filed as a petition, or not. He noted the record was full in terms of debate, pro and con, about whether or not to have a variance. He stated that he didn't feel like the Commission was rushing to judgment on this, it has been discussed and the Commission has been considering all of the aspects for several years. **Commissioner Parker** indicated that he would be inclined to take action on the final rule. However, if action for approval was taken on the final

rule, while at the same time having the formal petitions process on going, that process seemed inconsistent. **Commissioner Parker** believed that would send a signal back to the licensees that the Commission really hasn't made a decision, a decision has been made, but the Commission is still open to reconsidering that decision. For those reasons, Commissioner Parker advised that he would be inclined to vote against the motion. **Commissioner McLaughlin** stated she felt exactly opposite. Commissioner Parker advised he respected Commissioner McLaughlin's view and understood. **Commissioner Ludwig** explained that it was his general philosophy that any petition or any proposed rule should always be filed for discussion. He believed that it didn't make a difference what action was taken on the pending proposal to eliminate the variance. If it did not pass, the petition would be on the agenda as an option, if it passes and the variance is rejected, this would still on the agenda for further consideration and may be reinstated under the criteria and guidelines listed in the petition. **Commissioner Niemi** commented that since the two petitions were submitted and were then withdrawn and changed slightly and refilled this month, it seemed like it would not be a big deal to vote against the motion to keep this on the books. She believed if the commissioners voted to eliminate the variance, something else might come up with the elimination that would cause the licensees to want to file another petition. She noted they may continue filing petitions, and all the Commission is doing is saving four months when it may or may not be something the people are concerned about anymore. Commissioner Niemi stated she would intend to vote against the motions. She emphasized the Commission would listen to comments and take them into account, and ultimately make a decision. She cautioned that sometimes the decision is painful, and sometimes people don't want the "bad" decision; however, they would rather have a decision instead of coming back and listening to the same issues over and over again. Commissioner Niemi believed it was the responsibility of the Commissioners to reach a decision about the variance process and meeting the cash flow requirements because discussions have gone on for literally years and it's time to decide what to do and stick with it.

Director Day clarified that after a lot of study, staff continues to recommend that the variance process be repealed. When posed with the two petitions, the staff recognized the tradition of the Commission to file rules for further discussion, which placed staff's position in a quandary. He commented that after substantial discussion, staff could not say the petitions the Commission is looking at right now adequately addresses the concerns that have been articulated by Assistant Attorney General Ackerman and the commissioners. There are also legal problems with the petition. If the Commission desires continued discussion on this topic, then taking action to file the petitions would be appropriate. If the desire is to move the Commission forward, the Commission should not file the petitions, because it may send the wrong message. Director Day noted the Commission could file the petitions and still repeal the variance. However, from a practical administrative aspect, Director Day believed if the petitions were filed and the Commission turned around and repealed the variance, it would to a certain extent be disingenuous. On the one hand, we are saying we are going to keep looking at this, and, on the other hand we are repealing it. Director Day believed it was important to send a consistent message.

Mr. Ackerman suggested a process to have Ms. Patjens provide a summary for each rule, then hear from the proponents, and then have discussion, and facilitate action on each proposal at the conclusion of all three presentations. The commissioners concurred.

Chair Orr proceeded to Agenda Item 14:

14. Petition for Rule Change Submitted by the Charitable Nonprofit Voice Regarding Adjusted Cash Flow Petition and Variance Process:
WAC 230-20-059:

Amy Patjens addressed the first quarter cash flow reports for January, February, and March, which were due on April 30, and noted that 88 percent of the reports have been received. Traditionally, the first quarter is the best quarter, the second quarter is the second best, the third quarter is next, and the fourth quarter is typically the worst. The cash flow report denoted that the only organization out of compliance after the first quarter was Snow King Amateur Hockey Association. That organization has been before the Commission and settlement agreements are being negotiated. In reference to the "Top 25 Licensees" report, staff looked at how the first quarter of 2003 compared with the prior last two quarters, and noted that gross receipts were up and the Bingo sessions were up. The number of Bingo sessions were up by more than an 140, and the cash flow percentage was down, the lowest it's been in 3 years, down from the first quarter of 2002 by 8/10's of a percent, which doesn't sound like a lot; however, when looking at the overall numbers they are more significant (anything less than 10 percent). The "All Licensees" report was different, when comparing all the Bingo licensees in the state, the gross receipts were down overall, and the sessions were also down by about 1,500 sessions. Cash flow was also down, but it is down slightly by 1/10 of a percent.

Commissioner Ludwig responded the figures weren't all that meaningful because there have been a lot of Bingo operators that have gone out of business, and the report contained figures for 2001 and 2002, which still have those operators included and could therefore skew the statistics. **Ms. Patjens** affirmed, and noted that even with the lost Bingo operators, the Top 25 still reflects that the last quarter was still the best quarter. She explained that there are only 26 operators in the state that are required to have a cash flow of more than \$1.00 -- and they are the organizations impacted by these rules. **Director Day** emphasized the good news in those figures; the fourth quarter in 2002 was the best fourth quarter the Bingo businesses had in the last three years in terms of total in gross -- the first quarter of 2003 was the best first quarter the Top 25 have had in the last three years. **Director Day** also noted that 12 or more of the licensees were in some kind of compliance issue or potential compliance issue with the Commission the last time last adjusted cash flow report was issued. That situation has almost entirely disappeared, and based on the amount of income that has come in and their adjusted cash flow requirement, virtually all of the Top 25 licensees are now in compliance. Some have exceeded the minimums established by a substantial margin, and it appeared the system was starting to fall in place and working a little bit. The pending disaster apparent in the last reports was not apparent as we move out of this last quarter.

Ms. Patjens addressed the petition submitted by the Charitable Nonprofit Voice, noting this proposal was better than the previous petition submittal. However, staff still has concerns. In terms of process, the Director or his designee would consider the variance requests. Last month the petitioners proposed having the internal agency rules team conduct the initial review on petitions, and having them come before the Commission. The revised petition deletes the reason for variance, when there is a legally binding financial obligation -- which is one of the criteria previously discussed extensively. **Ms. Patjens** recalled the rules were passed two years ago, and the intent for that provision was to give the licensee a couple of years to get out of their high lease agreements. The couple of years have now passed. Another change to the revised petition relates to the second reason someone could get a variance, which was when an organization was within 20 percent of

their requirement, versus the 10 percent current requirement. Ms. Patjens noted that none of the organizations that have been before the Commission have been within 10 percent of the requirements. Staff looked at the cases that had been before the Commission to see how they would have been impacted and determined that only two organizations would have been impacted by a change to the 20 percent proposal. In one case, it would have meant that the organization would not have had administrative action for an additional quarter; it would have given them leeway for one more quarter. In the other case of the other organization, the 20 percent change would not have helped them. **Commissioner Ludwig** verified the Charitable Nonprofit Voice, is the group that has to show a positive cash flow, which means maybe a \$1.00. **Ms. Patjens** responded in the negative, and clarified the group has some of its members in that category, others appear on the Top 25 list. Ms. Patjens advised that another thing added in this proposal was that a licensee may ask for a variance once every four years -- the CNPV explained they don't want someone coming back year after year. They also believed the market may possibly continue to struggle, and because of this possibility, variances should be allowed once every four years.

Commissioner McLaughlin asked if allowances were made for organizations buying their Bingo halls. **Deputy Director Berg** affirmed that a licensee is allowed to make such an allocation; it is built into the formula. Commissioner McLaughlin questioned what would be wrong, as long as the charity was satisfied with their Bingo game, and not putting any of their money into it. Ms. Patjens recalled previous discussions relating to the new cash flow requirements, and whether a threshold was needed, or, if returning one dollar was enough. The decision at that time was that over the years the Commission continued to lower the amount, and that the cash flow requirement was meant to be the absolute minimum threshold. Ms. Patjens noted that we've heard from organizations who have said their board would not find it acceptable to only make one dollar, and other organizations would not feel the same, which makes it hard to have one system. **Mr. Ackerman** responded that it was his understanding that the adjusted cash flow and the net return requirements have been the Commission's attempt to comply with the requirements of RCW 9.46. If a charity is going to engage in gambling, that gambling should return money to the charity. That is the statutory basis upon which the Legislature has allowed charities to be in the gambling business. It wasn't to provide entertainment for the community.

Ms. Patjens reported that one of the changes in the current petition is that the variance is forward looking, meaning that it would allow the organization to be out of compliance for the past four quarters, then administrative action would be taken, and then the licensee would have four more quarters to get into compliance -- which is about a 24-month period. The organization also explained their intent was that since the petition did not set out criteria, the Director would consider whether to grant the variance, and if a licensee was within 20 percent, they would qualify. There were no further comments or questions.

Chair Orr proceeded to Agenda Item 10:

10. Bingo Adjusted Cash Flow - Petition and Variance Procedures:

WAC 230-20-059:

Amy Patjens explained this rule deletes the variance process contained in Subsection 5. If this rule passes, the process would be similar to a regular administrative case. If the licensee is out of compliance, they would go to a hearing before the Administrative Law Judge and then that case could be appealed back to the Commission. Currently, the variance comes before the Commission,

the case could still go back to then ALJ, and then come back once again to the Commission. Staff made a change in the definition of a Bingo operation to make it clearer that if an organization is conducting raffles that are not being conducted in the Bingo Hall, those raffle proceeds should not be considered in the cash flow calculation. **Commissioner Parker** inquired what the grounds would be for a petitioner to present to an ALJ to make an argument that their license shouldn't be revoked. **Ms. Patjens** responded that there would be very few, if any. At the hearing, the Judge would be looking at whether the licensee met the cash flow requirements. If not, then most likely the Judge would uphold the Director's administrative charges to revoke the license. One area that could get considerable discussion would be whether the calculation was accurate, which is why this proposal clarifies how the Commission treats raffle proceeds.

Director Day clarified the CNPV petition brings the request for the variance to the Director, but it does not specify any criteria, which is the decision that the Director's decision must be based upon. Director Day believed that process puts the Commission back in the same situation although the rule is shorter, and the Director is then back in the same situation about what criteria should be used to grant the variance decision. **Commissioner McLaughlin** addressed the possibility of going down a class (surrendering a license and applying for a lower license), if an organization couldn't meet their adjusted cash flow, and inquired if the Commission decided to do away with the variance, whether the rule could be amended so that all the licensee had to do was ask for a lower license classification, rather than surrender their license. **Commissioner Ludwig** echoed Commissioner McLaughlin's suggestion for a simpler process. **Assistant Director Derry Fries** affirmed that at any time, any organization may downgrade their license – that is not a problem. However, in this particular case, the organization that would be surrendering their license is already under charges. **Deputy Director Berg** addressed the cash flow compliance issue and noted that when a licensee might be in difficulty of meeting that threshold, lowering the license may change the percentage of cash flow requirement, however, it may still leave them out of compliance, because the license classifications are based on the gross gambling receipts. There is still a percentage that is ultimately required to be returned. **Special Assistant Ed Fleisher** reiterated that when someone goes to a lower license class, there is also a cap on how much gross revenue they are allowed to take in and there is no guarantee the licensee would meet the cash flow because they don't have the same cash flow on the bottom line.

Commissioner Parker verified that what the Commission is considering, is striking the petition for variance section. That would leave the rule, which would say that if a Bingo licensee fails to meet the cash flow requirements when averaged over a period of two consecutive quarters, then the licensee shall develop a plan – they shall take steps to reduce expenditures and report the plan to the Commission staff. Then, if the licensee fails to meet the cash flow requirements when averaged over four quarters, their license shall be revoked. There is nothing in the rule as it would stand, if the variance provision is removed, that would make it automatic and essentially with no notice to the licensee. The licensee knows that if they are out at two quarters, that's a red flag, and then if it's four quarters, they either go down to a lower level license, or argue to surrender their license. **Ms. Patjens** affirmed and noted that three years ago, when the Commission had the net return rules and sanctions for non-compliance, the licensee would take the reduction in their license class. The licensees reported that wasn't practical because it capped income while their expenses remained the same. There were no further comments or questions and **Chair Orr** called for public comments.

Frank Miller, Attorney for the WCCGA, emphasized the need for regulatory compassion and regulatory flexibility. Regarding downgrades, it was his belief that once a licensee was under administrative action, which is part of the current rule, a downgrade should be a permissible form of settlement, because the downgrade in and of itself was a penalty. He affirmed that once a licensee downgrades they are capped in gross, and must therefore cut back sessions, and make other cuts. He believed any revocation action in the downgrade should be part of an official settlement. Mr. Miller addressed the discussion regarding the threshold, and how low it should be, which was why the variance process was created. He suggested that if the Commission voted to approve the repeal of the variance, that would effectively take half of the rule and the flexibility away from licensees. In response to the cash flow reports addressed, he emphasized that only 88 percent of the reports have been submitted for this quarter. He suggested the 12 percent that are not included could significantly affect the bottom line in a more positive mode. Mr. Miller also noted that he represents 18 of the licensees reflected on the Top 25 list. He stressed that every licensee who has a potential to face a variance is objecting to the repeal of the variance process, not just two or three licensees.

Mr. Miller related how the WCCGA's petition would relate to a real life example. A licensee just got word from a county or city authority that the main road from I-5 to their Bingo Hall would be closed for two consecutive weekends. That would have a huge impact on their bottom line. This is the number one organization in the State of Washington. They return \$600,000 plus a year to their organization. They return 34 percent of what's left after prizes. Under the WCCGA's petition, they could come forward to the Director and explain that they didn't make \$600,000 this year; they only made \$550,000 because a road was closed down, which was an unforeseen problem. The Director could give them a variance. They have four quarters to come into compliance, and if they don't, they surrender their licensee. They would know well before they ask for a downgraded license what would happen. This at least allows flexibility, and there is a remedy. Under the Commission's proposal that is gone, and the Commission would seek revocation of that license, and all of that money would be gone. Mr. Miller explained the licensee also pays \$300,000 a year in taxes to the City of Mountlake Terrace, which isn't taken into account in the cash flow formula. Last month the WCCGA asked for an opportunity to meet with Commission staff, to see if they could find a compromise and some flexibility. Mr. Miller reported that there are no variance petitions before the Commission and there probably won't be for some time, which leads to the question, why must the variance rule be passed today, what's the emergency. The WCCGA met with the staff, and had five days after that meeting to submit a new petition in order to meet the agenda deadline. The WCCGA made a good faith effort to make an improvement and limit the criteria, and the revised petition was drafted and sent out for review and comment. The petition essentially gives a licensee four quarters to come in compliance, or they surrender their license. There may be a legal problem with that process, however, the WCCGA is willing to discuss that and to work with Commission staff to find a solution that gets it off the Commission's plate and that gives some flexibility for unforeseen problems out of the licensee's control. Doing away with any flexibility, would not be compassionate, and is not consistent with the public policy of state; which allows this activity as a social pastime. The WCCGA supports the filing of their petition, however, they are not wedded to the language and would put in whatever time it takes to find a solution that gives compassionate flexibility when a variance is needed. Mr. Miller urged the Commission to come back in August with a decision. Meanwhile the working group could come forward with a compromise that worked, rather than filing a rule and putting a new rule in place to replace the one just filed.

Mr. Miller acknowledged this is an emotional issue and has been a tough issue over the years. It's down to a much-simplified process, the licensee is in or out of compliance, the criteria is defined, if they don't get it, they have four quarters, they go away, and downgrade. Mr. Miller asked the Commission to continue to re-file the variance repeal rule, and to file the WCCGA's petition for further discussion. The WCCGA supported their counterpart's position and the filing of their petition as well. **Commissioner Ludwig** reiterated the frustration the Commission uniformly had with the variance procedure under the current rule. He noted the Commission couldn't criticize anyone else for the current rule, however, it has been acknowledged that there are all kinds of problems with the rule. Commissioner Ludwig identified the long-term financial obligation/lease debate, which needed clarification. The issue of a viable plan was raised, which created more problems and required spending even more time debating those issues. The Commission doesn't like the variance procedure, which is why the repeal was suggested. Mr. Miller acknowledged the comments and agreed the rule was broken, and the WCCGA's petition was an effort to find a solution that streamlined the process and that gives some flexibility for an unforeseen problem. The financial agreement is no longer in the language. The WCCGA is more than willing to refine the language even further, as long as there was some regulatory compassion for something that occurred that was out of the licensee's control.

Commissioner Ludwig commented that in reviewing the petitions, it appeared the licensee gets four months to come up with a plan. He asked why they couldn't be required to come up with their petition for variance and their plan simultaneously, after two months, when notice was received. **Mr. Miller** affirmed it could, noting the proposal did not change the plan language, and that the WCCGA was willing to put a plan in as part of the criteria. However, he noted it was difficult to develop a plan for the staff to review because they are not trained to read plans. Plans change, there is no one plan that works, and it changes month to month. The plan is an exercise to make the organization look at themselves, to go through a process so they can come before the Commission and say they have looked at the situation and they have taken it seriously. Commission staff does not have expertise in managing Bingo Halls, which makes evaluating plans difficult.

Commissioner Parker explained the commissioners has asked for a recommendation from staff; and staff seemed to be pretty clear-cut in their proposal to eliminate the variance provision. Commissioner Parker asked Mr. Miller to speak to staff's recommendation. **Mr. Miller** responded that it was difficult to oppose staff's position, and he was not asking to disagree with the staff today. The WCCGA was simply asking for a few more months to sit down and work with the staff to see if they could find a better solution. If the Commission repeals the variance, and then files the petitions, he agreed that the message being sent would be that the variance is gone, but by the way, go ahead and come forward, and try to convince the Commission again. Mr. Miller reiterated that he was not asking the Commission to overturn staff's view, he was simply asking for a few more months to find a flexible solution.

Ernestine Farness, representing the CNPV, thanked the Commission for the opportunity to address the Commission and emphasized the CNPV was not in a debate with the WCCGA. The CNPV does not want to see the variance process eliminated, they want some means of being able to come back if licensees are not able to meet their requirements. However, there were some things in the WCCGA proposal that the CNPV did not agree with. Whatever is done, the CNPV wanted it to be an overall fair decision implemented across the board. Right now, the licensees appear to be okay, but

somewhere, someone might need consideration when they don't quite meet the requirement. She appreciated the frustration from the Commissioners, and all the time and energy that has surrounded this issue over the years. The CNPV submitted their proposal because something was needed, rather than repealing the variance. Ms. Farness urged the Commission not to close the door on the nonprofits, and to leave it open so they could survive. The CNPV agreed some flexibility was needed. When Bingo first started, it was a social pastime, it still is, but it has become an industry. People are making money for their organizations. **Ms. Farness** asked the Commission to think of all the good things that are being done with the money and affirmed the CNPV would do anything to help ease the Commission's frustration.

Commissioner Parker verified that if the variance process was repealed, the rule would be that a licensee could request an opportunity to operate at a lower cash flow ceiling, and if they were to do that, and then wanted to go back to the higher level because of whatever change in circumstances, they could take that reasonable step. **Mr. Fries** responded that staff would process an upgrade or downgrade at the request of the applicant or the licensee; that option is available with all activities that have classes. **Commissioner Parker** asked Ms. Farness if that process provided the flexibility and the kind of openness the CNPV was seeking. **Ms. Farness** didn't believe so, not in all cases. Lowering a license class doesn't necessarily give the licensee the revenue they might need to meet the requirement. If one lowers their license class then they also have to look at lowering the prices charged and lowering payoffs, which may cause a loss in clients. It doesn't necessarily solve the issue. Ms. Farness noted that when a licensee doesn't meet the requirement, they watch their gross, they watch the license class, and what is required. She affirmed that the competition is not necessarily the Bingo industry competing against themselves, but the other competitions that didn't exist several years ago. Ms. Farness emphasized that the Bingo industry needed the Commission's help to stay in business; the organizations need consideration, and also needed to be regulated so they could stay in business. **Commissioner McLaughlin** noticed that the Bingo payments continue to go up, and questioned why. Ms. Farness believed it was a matter of competition and trying to keep up. Commissioner McLaughlin responded, in other words, that the Commission regulates Bingo outside of the Indian Nation casinos, however, the Commission does not regulate the tribal Bingo, and the nonprofit Bingo is competing with a type of gambling that has no regulation by the Commission. Ms. Farness affirmed and noted the nonprofits are trying to keep up.

Clyde Bock, Bingo Manager for Big Brothers and Big Sisters, addressed downgrading and applying for a new license, noting that has ability, but, the danger is that once a licensee surrenders their license, the period before they are issued a new one at a lower class is critical. If a licensee surrenders their license, they take action to become more efficient, they lower their classification, have lower volume, and fewer sessions; but if there is a difference of even two weeks, that penalty could be very severe. He suggested that if the Commission is really trying to help games help themselves, the less we do in terms of a penalty, and still accomplish what we're trying to do, the better. If a license is surrendered because the licensee is under the jurisdiction of an administrative action – if the new license could be issued so there is no downtime, then the penalty is less severe, which would help the organization get into compliance. **Commissioner Ludwig** noted that a downgrade could be requested almost automatically. He asked Mr. Fries if the licensee couldn't just keep the license, not surrender it, and request a downgrade. **Mr. Fries** verified that if it were a normal licensee that wanted to be downgraded, staff would downgrade (or upgrade) the license as requested. However, a rule exists that requires an upgrade if a licensee's gross receipts exceed the

highest amount allowed in their existing class. If the licensee is under administrative charges, and there is an agreement that they surrender their license in lieu of any further administrative action and downgrade to a lower class, that is basically a new application process. **Mr. Bock** responded that when the licensee surrendered that license, there would be a down period for that game, and that down period is when the real penalty to the game kicks in, which makes it even tougher to come into compliance. Mr. Bock recommended the transition from the surrender of a license to obtaining a new one should be a small amount of a time, or, preferably nothing. **Commissioner Ludwig** reiterated that once a licensee anticipates being out of compliance, they would not have to surrender their license, they could simply request a downgrade.

Chair Orr commented about the figures and statements bantered around that have been a little frustrating. “No one is out of compliance so there’s no rush.” Chair Orr suggested that perhaps this was the best time to make a decision when no one is out of compliance, because if we wait until someone is out of compliance, there could be an accusation that the Commission was being prejudicial. Figures have been bantered around regarding an organization that was out of compliance for a quarter, out by \$50,000 and how it was going to impact them. Chair Orr reminded the audience that there are a lot of people that don’t make \$50,000 in a whole household in a year. He stated that was a lot of money, and the Commission’s obligation is to protect the citizens because they expect the Commission to make sure that money and activities are accounted for properly. Chair Orr emphasized that the licensees needed to understand that the Commission has to make decisions for the benefit of the citizens that the Commission is supposed to represent. Sometimes their minimum, our minimum, and the licensee’s minimum are going to be different.

Commissioner Parker asked for a staff response to the downgrade license process. **Mr. Berg** responded that previous minutes in reference to net return detail a former Commissioner's extensive comments about putting the nonprofits in a downward spiral as their classification is limited because they are capped at how much money they can make, and it is harder to make that percentage back to their charity because of the capping. Mr. Berg believed a lot of this had to do with the efficiencies within the structure of the gambling operation as opposed to limiting their class. He affirmed that when one limits a class and downgrades a licensee, if the licensee still has fixed overhead costs that don’t decrease proportionately, they would be forced to reduce sessions, or they’re forced to deal with their payout price because they still have people on their payroll. Mr. Berg believed that downgrading probably works best when someone is under an administrative action and they do surrender their license and then come back. Downgrading and upgrading, although they are options available, are not that efficient. **Mr. Miller** agreed it started a downward spiral, which is an important part of administrative process; certainly the downgrade is part of a settlement that is subject to negotiations. However, once a licensee goes down, it’s hard to come back, and so it is a last resort. For those that have to downgrade it is a penalty, and they may not come back, it’s not a guarantee – the variance gives the licensee one last chance, without going to the downgrade.

Director Day offered some closing statements and reemphasized this is not an issue about bad people or bad projects, or compassion – it has absolutely nothing to do with that issue. The rule before the Commission is a bad rule, it does not work, and has not worked effectively. The first part of the rule with the 10 percent provision has never applied to anybody. The second part of the rule, the long-term debt issue – if the Commission granted this kind of this variance to a licensee, giving them an opportunity that hasn’t been given the rest of the licensees, it wouldn’t be fair. Director Day

indicated that the staff steps out and tries to help people resolve concerns that they might have, or find solutions for them. He questioned the solution we're working at right now, once the licensee gets to the revocation point, is there a solution that involves the surrender of license – or involves some other kind of a process. The licensee is actually at the worst point, they have gone through a process that has extended well over a year as they attempt to correct their operation. Finally, at the end of that intensive process, the licensee is entitled to a revocation hearing. **Director Day** noted that even at that point the agency is trying to step out and find a solution that allows the charity to continue its operation. It may not be at the particular level they were at before, but it closes the gap so the licensee doesn't have to suffer the process of being out of business anymore than they want. **Director Day** believed the straightforward answer is that the variance concept does not work. It is the problem. He didn't believe we would be able to move out of considering the variance as a solution until the Commission moves us on – and in this case, **Director Day** believed that if we removed the variance we could move on and we look for solutions to these problems in other sections of the rules, if and when it emerges.

Casey Leafson, American Vets Post #1, Tacoma, spoke in support of the CNPV. He believed the proposal broadens the variance process for everybody, it didn't just take one person because they may be in a lease, or one person because they have a casino open up two blocks down the road; it opens the process up for everybody.

Chairman Orr noted a motion was on the floor to file, Item #13. **Assistant Attorney General Ackerman** affirmed. **Chairman Orr** explained the Commission would vote on that, then move to Item #14, and then move to Item #10. **Mr. Ackerman** suggested considering the repeal first, because if the Commission decided not to enact the repeal, the existing variance remains. As the Commission considers the other two options presented, it may be easier to compare them to the variance in place and determine if it is better, if it is different, or if it improves the situation. If the existing variance is repealed, then in essence, the Commission would be starting clean and creating a variance from the ground up.

Commissioner McLaughlin asked if the Commission repealed the variance, what would happen if someone fell out of compliance during the next few months as the Commission discussed the two petitions. **Mr. Ackerman** responded that it would depend on the effective date of the repeal. The existing variance could continue until the repeal becomes effective. If there is a gap between when the repeal becomes effective, and someone is out of compliance before a new variance was put into place, the issue that would be before the ALJ would be whether the computation was done correctly, and whether the licensee was in compliance or not.

With no further comments, **Chair Orr** called for a motion on the final action for Agenda Item #10. **Commissioner Parker** made a motion seconded by **Commissioner Niemi** to accept staff's recommendation and repeal the existing variance process as defined in Agenda Item #10. **Commissioner McLaughlin** commented this was an opportunity to hear the world, or shut off the debate. There were no further comments. *Vote taken: the motion passed with four ayes, Commissioner McLaughlin voted nay.* **Mr. Ackerman** announced the variance was repealed by a 4-1 vote. **Commissioner Ludwig** commented that while he hated to take away the safety net, at the same time the existing variance rule has been a disaster, and he wanted to get rid of it. He said he also has some desire to support the petitions.

Chair Orr called for comments or a motion for Agenda Item #13, the petition submitted by the Charitable and Civic Gaming Organization. **Commissioner Parker** verified that if the Commission takes no action, there would be no petition. **Mr. Ackerman** responded that requires a decision by the Commission whether or not to file Item 13 and 14, however, the Commission needed to take action to file, or not to file, and he affirmed an existing motion was on the floor in regard to Agenda Item #13. **Chair Orr** called for the vote: **Commissioner Niemi** and **Commissioner Parker** voted nay, **Commissioner McLaughlin** and **Commissioner Ludwig** voted aye. **Chair Orr** voted nay. The motion failed. **Commissioner Parker** stated the reasons for denial have been articulated very clearly, and he recommended starting with a clean slate because the existing rule doesn't work. He further explained the denial puts the Commission in a position to reconsider whether further provisions are necessary, and, for now, it is clear the variance provision currently on the books does not work. **Commissioner Niemi** incorporated the argument that there are some real problems that could possibly be taken care of in the proposed petition; however, the petition starts with the existing variance and tries to make some changes to make it simpler. In Commissioner Niemi's opinion, the petition left out things that were pretty essential and she advised that she was not willing to accept the reasons for a variance petition as laid out in the petition -- the idea of a catastrophe, a terrorist attack, or a road closure, because they were not appropriate. **Chair Orr** believed that the system needed fixing. He understood there might be more petitions, and perhaps everyone could work through some of the problems. **Commissioner Ludwig** explained that he voted to file for further discussion because it provides a chance to fine tune and amend a rule in order to get the final product truly desired during the next three to four months.

Chairman Orr called for comments or a motion for Agenda Item #14, the petition submitted by the Charitable Nonprofit Voice. **Commissioner McLaughlin** made a motion seconded by **Commissioner Ludwig** to file the petition. Commissioner McLaughlin commented that it seemed like the Commission was closing a door and opening it at the same time. She believed filing this petition was also direction to staff to look at the petition and tell the Commission what is right or wrong, or how to fix it. The CNVP have offered a petition and if it isn't right, the Commission shouldn't consider it. The petitioners know that the product isn't perfect and they are willing to work with the staff, and maybe it isn't a "variance." **Director Day** affirmed the Commission is faced with a need to fix this rule or this variance concept. Some of the options discussed were whether there was a successful way to refine the surrender of license process or the upgrade process, or a process that would allow a licensee to drop one bad quarter. Director Day agreed those might be the kinds of things the Commission needed to consider, but couldn't consider until we stop trying to fix the variance. He emphasized this petition brings the Commission back to the same thing—a variance. **Commissioner McLaughlin** suggested staff and the petitioners work together to find an answer that everyone would agree to; something better than what they've offered.

Commissioner Parker called for the question. Vote taken: Commissioner Ludwig and Commissioner McLaughlin voted aye; Commissioner Parker, Commissioner Niemi and Chair Orr voted nay. **Commissioner Niemi** commented the biggest part of the petition was that the Commission wouldn't have to hear about variances anymore, the Director would hear about the variances, and she didn't think that was practical. **Commissioner McLaughlin** advised she would be willing to offer a motion to direct the staff to look at a form of relief for Bingo operators if they needed it, on a one-time basis, within a certain time period. **Chair Orr** asked if there was a second.

Commissioner Niemi believed that motion would be out of order until comments were completed. **Commissioner Ludwig** commented that in the interest of time, he assumed the same reasons the majority from the previous vote would apply to this motion as well also. **Commissioner Parker** and **Chair Orr** concurred.

Commissioner McLaughlin made a motion to direct staff (or through Director Day), to come up with some sort of relief for Bingo operators that have unforeseen circumstances that prevent them from achieving the net cash flow they are currently required to return to their charity. **Commissioner Ludwig** offered to second the motion with an amendment to direct staff to explore the possibility of adopting a rule that has nothing to do with variance, but has something to do with being out of compliance, and that after the first two quarters of being out of compliance, when the licensee is given notice they are out of compliance, that the matter would continue on until the end of four quarters. However, at the time the question of the variance over the four-quarter period is calculated, the Commission consider only three out of those four quarters, with the licensee having the option of eliminating anyone one of those four quarters. Commissioner McLaughlin accepted the amendment. **Commissioner Parker** advised he was interested in knowing if the Director or the staff would be constrained by such a motion, or if it would be wiser to have more of an open mandate from the Commission to just let the Commission know whether something needs to be done. Commissioner Parker believed this presumes something that he wasn't quite sure he was willing to presume. His first consideration would be that we're required by a law to follow the conditions for licensure, and take it from there. Commissioner Parker advised he would oppose the motion because he believed the Commission should let the staff advise the Commission if there was a problem, and if so to provide recommendations to deal with the problem. There were no further comments or questions and **Chair Orr** called for the question. **Commissioner Ludwig and Commissioner McLaughlin** voted aye; **Commissioner Parker** and **Commissioner Niemi** voted nay. **Chair Orr** cast an aye vote. *The motion passed.*

Chair Orr called for a recess at 11:35 a.m., and reconvened the meeting at 11:40 a.m.

Chair Orr proceeded to Agenda Item 11:

11. Financial Reporting by Licensees:

WAC 230-12-305:

Cally Cass-Healy, Assistant Director, reported there have been no substantive changes since last month. The introduction has a change, which reads: Submit any new or updated documents or information including but not limited to the following: Under Subsection 3, changes were made to clarify that all agreements must be submitted whether oral or written. In Subsection 4, a change was made so that all cash or asset contributions must be reported to the Commission to enable staff to be fully informed on all the licensees' financing activities and facilitate a more complete financial investigation on all parties involved in the financing. In addition, the \$2,000 reporting threshold for loans was increased to \$10,000 because \$2,000 was considered no longer material in today's environment. This item is up for final action, and staff proposed adoption effective July 1, 2003.

Chair Orr called for questions, comments and public comments. **Commissioner Ludwig** questioned why this was needed. **Ms. Cass-Healy** responded that it is essentially to clarify what we currently require, and to increase the limit of the loan-reporting requirement.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to adopt WAC 230-12-305 as proposed. *Vote taken; the motion passed unanimously.*

Chair Orr proceeded to Agenda Item 12:

12. Equipment Review:

WAC 230-12-315, WAC 230-12-316, WAC 230-02-412 and WAC 230-04-110:

Cally Cass-Healy, Assistant Director, reported this is a package of four rules. Item 12 (A) includes procedures for reviewing equipment for integrity and compliance, which are already set by policy. It is to codify policy. The entire package sets forth a regulatory framework to support staff's effort in reviewing and testing equipment in conjunction with activities authorized under RCW 9.46.

Item 12 (B) sets forth a regulatory framework to support our efforts in reviewing and testing equipment used in conjunction with gambling activities. At the April meeting staff asked the Commission to hold this item over. Staff resolved the outstanding issue and changed the language in this rule to clarify that the Director would review equipment for compliance with Washington State Laws and the Commission's regulatory requirements. The concern was that the equipment was either legal or illegal and the Commission simply reviewed for compliance. Furthermore, if the person submitting the equipment for review does not agree with the Director's findings they may petition for declaratory judgment.

Item 12 (C) was amended to include software for Keno systems and equipment and a definition of gambling equipment, to bring the language into the 21st century.

Item 12 (D) clarifies that although amusement games are gambling equipment, the Commission does not license the manufactures of amusement games. This rule package is up for final action, and staff recommends an adoption date effective July 1, 2003.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to accept WAC 230-12-315, WAC 230-12-316, WAC 230-02-412 and WAC 230-04-110 as amended. *Vote taken; the motion passed unanimously.*

Ernestine Farness again offered a sincere thank-you to the Commission, noting the Commission must make the decisions, and again expressed her appreciation for the time and effort.

Chair Orr proceeded to Agenda Item 15:

15. Other Business/General Discussion/Comments from the Public:

Chair Orr called for public comments and there were none. With no further business, **Chair Orr** adjourned the meeting at noon. The next meeting is scheduled for June 12 and 13, 2003, in LaConner.

Minutes submitted by:

Shirley Corbett
Executive Assistant